IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8182 of 2000

with

CIVIL APPLICATION No.1681 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRITBHAI RAVJIBHAI PATEL

Versus

GROUP GENERAL MANAGER

Appearance:

1. Special Civil Application No. 8182 of 2000

MS SHUBHRA ALMOULA for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

In this petition, the petitioner is praying for direction against the respondent to give employment to the petitioner in the survey work being conducted by the respondent from time to time.

2. On earlier occasion, the petitioner had approached the Labour Court challenging his termination on the ground of violation of section 25-F of the Industrial Disputes Act. Having failed, the petitioner had approached this Court by filing Special Civil Application No.5862 of 1990. The said petition was partially allowed and certain directions for payment of wages were given in favour of the petitioner. The respondent, however, approached the Division Bench by filing Letters Patent Appeal No.660/94 and upon certain settlement, the petitioner was paid an ex-gratia amount, upon which the petitioner sought to withdraw the petition itself.

3. In this petition, the petitioner has contended that having worked for the respondent for certain duration in the past, he is entitled to be reengaged whenever such work is undertaken afresh in preference of other labourers. Since the the petitioner had already approached the Industrial Tribunal and the matter went upto the Division Bench of this Court, it is not necessary for this Court to go into the question of earlier termination.

4. The learned advocate for the petitioner relying on a decision of the Hon'ble Supreme Court in the case of Cawnpore Tannery Ltd., v. S. Guha, reported in AIR 1967 SC 667 contends that in view of the provisions of section 25-H of the Industrial Disputes Act, the petitioner is required to be re-engaged as and when the work is undertaken by the respondent. Learned advocate for the petitioner has also relied upon a decision of the Hon'ble Supreme Court in Workmen, A.B.Koyla Kamgar Union v. M/s.Bharat Coking Coal Ltd., AIR 2001 SC 1994 wherein it is observed that section 25-H of the Industrial Disputes Act creates an obligation that a retrenched workman will have preference when fresh appointments are made.

5. From the averments made in the petition as well as from the reply filed by the respondent, it is clear that the petition involves large number of disputed questions of facts. The number of days put in by the petitioner, availability of work and the location of such new work would be relevant consideration before the Court can decide whether the petitioner is entitled to get

employment as per the provisions of section 25-H of the Industrial Disputes Act. The respondent has opposed the petition on number of grounds and has pointed out that the petitioner has put in a very few number of days work that too way back in 1980's. It is also stated that looking to the nature of work and other relevant circumstances and the requirement of skilled labour force, the respondent follows certain policy which includes, inter alia, the intention to provide employment and economic activity to the local people and to seek cooperation of the local population and the Corporation, therefore, mostly engages local labourers that too only through Employment Exchanges of the District. In the nutshell, there are number of disputed questions of fact which shall have to be gone into and decided before the request of the petitioner can be entertained.

6. In the case of U.P.State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh, (2004) 4 SCC 268, the Hon'ble Supreme Court has observed that the High Court erred in entertaining the writ petition of the Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well as the U.P.Industrial Disputes Act, 1947. The rights and obligations sought to be enforced by the Union in the writ petition are those created by the Industrial Disputes Act. Reproducing the observations made by the Hon'ble Supreme Court in Premier Automobiles Ltd v. Kamlekar Shantaram Wadke reported in (1976) 1 SCC 496, the Hon'ble Supreme Court further observed that when the dispute relates to the enforcement of a right or an obligation created under an Act, then the only remedy available to the claimant is to get adjudication under the Act. It is further observed that it would need a very strong case for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner. It was also observed that it is an established practice that the Court exercising extraordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. The Hon'ble Supreme Court further observed that the only reason given by the High Court to finally dispute of the issues in its writ jurisdiction was the factor of delay on the part of the High Court in disposing of the dispute. It was observed that doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that the litigant is not prejudiced by the action of the Court since the objection is one in the nature of demurrer.

Nevertheless, even when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even when there is delay, short-circuit the process for effectively determining the facts.

7. In view of the above ratio laid down by the Hon'ble Supreme Court, I find that it is not possible for this Court to go into the questions raised in the present petition and the petitioner, if desirous of pursuing the challenge, may approach the appropriate forum under the Industrial Disputes Act for adjudication of the claims.

8. In the result, the petition being devoid of merit is hereby rejected. Rule is discharged with no order as to costs.

In view of the order passed in the main petition, the Civil Application is also disposed of. Rule is discharged.

(Akil Kureshi, J.)
(vjn)